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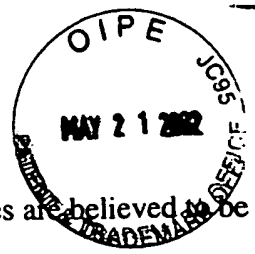
REMARKS

1. Election of Species among the Polypeptide Sequences

The Office Action states that the polypeptides in claims 1, 21, 41 and 61 are unrelated and distinct and has required Applicant to elect a single disclosed species. Applicant believes the election among polypeptides to be in error and request that it be withdrawn. The polypeptide sequences should be examined together for the following reasons: Claims 1, 21, 41 and 61 are Markush claims, listing the four polypeptides as members. Under **MPEP 803.02**, "[i]f the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the **examiner must examine all the members of the Markush group in the claim on the merits, even though they are directed to independent and distinct inventions**." MPEP § 803.02, (emphasis added). "[I]t is **improper for the Office to refuse to examine** that which applicant regards as their invention, **unless** the subject matter in a claim **lacks unity of invention**. (citations omitted) Broadly, **unity of invention exists** where compounds included within a Markush group **(1) share a common utility, and (2) share a substantial structural feature disclosed as being essential to that utility."** MPEP § 803.02, (emphasis added). Restriction of the polypeptides is improper because they are sufficiently few in number (four), they share a common utility (antimicrobial, anti-inflammatory, anti-infection activity), and they share a substantial structural feature disclosed as being essential to that utility (amino acid sequences Lys Pro Val / His Phe Arg Trp Gly). As a consequence, applicant respectfully traverses the restriction requirement and requests its reconsideration and withdrawal with respect to the polypeptide sequences.

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No fees are believed to be due. However, if this is in error, the Commissioner is authorized to charge Lyon & Lyon Deposit Account No. **12-2475** for any fees necessitated by this filing.

Respectfully submitted,

LYON & LYON LLP

Dated: 5/8/02

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